

HOSCHTON CITY COUNCIL

Regular Meeting Minutes

August 3, 2009, 7:00 p.m.
Hoschton City Hall

A regular meeting of the Hoschton City Council was held August 3, 2009 at 7:00 p.m. in Hoschton City Hall. Present were Mayor Bill Copenhaver, Council Members Richard Green, Jim Jester, Richard Shepherd, Tom Walden, Theresa Kenerly. Also present were City Clerk Kristen Mahan and City Attorney Thomas Mitchell. Council Member John Schulte was absent. Mayor Copenhaver called the meeting to order at 7:00 p.m.

ORDER OF BUSINESS

REVIEW MINUTES OF PREVIOUS MEETINGS

COUNCIL MEMBER KENERLY MADE A MOTION, SECONDED BY COUNCIL MEMBER WALDEN, TO APPROVE MINUTES OF JULY 6, 2009 REGULAR MEETING.

The motion carried by a 5 - 0 vote with all members present in favor.

Councilman Jim Jester requested the Work Session Meeting Minutes also be included for review of the substance contained within the Thursday Committee reports.

APPROVAL OF AGENDA

No discussion

PETITIONS, COMMUNICATIONS, RECOGNITION AND AWARDS

Councilwoman Kenerly addressed the citizens requesting that respect be shown in their conduct because her mother and grandchildren were present and that no name-calling or disrespectful comments occur as happened during the previous Council Regular Meeting in July.

REPORTS OF STANDING COMMITTEES

Water, Waste and Environmental Services

Councilman Green reported no changes to Thursday Work Session report.

Fiscal Resources

Councilman Walden reported no changes to Thursday Work Session report.

Public Works and Properties

Councilman Jester reported a Committee meeting held July 14, 2009 which convened at 4:00 p.m., adjourned at 5:00 p.m. and covered eight issues. Items covered included Brook Glen and Wildflower closed subdivision gates, annual GDOT Local Assistance Road Paving Program for 2010, Public Works 2010 budget review and recommendation, Serenity Court easement (property of Mr. Michael Holly), alleged illegal use of city electricity by Poppi's Pub, status of property line dispute where mercantile building has been relocated for restoration, and overview of the special committee for City Charter revision. Councilman Jester thanked Kelley Gary for installing metal obstacles and fencing to keep traffic from going around the closed gate at Brook Glen which was causing damage to curbs and creating a mess.

Councilman Jester submitted committee meeting minutes which are incorporated herein and made a part of the official Regular Meeting Minutes.

Public Safety

Councilman Shepherd reported no changes to report given Thursday. Shepherd announced three scheduled 'Community Forum: Future Direction of the Hoschton Police Department' meetings to be held at the Hoschton Depot. Meeting dates and times are Monday August 24th at 2PM, Monday August 24th at 7PM, and Thursday August 27th at 10AM. An agenda for these forums will be made available at the Public Safety Committee meeting on August 18th at 7PM being held at the Hoschton Police Department.

A Community Forum meeting schedule was provided which is incorporated herein and made a part of the official Regular Meeting Minutes.

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Planning & Zoning

Councilwoman Kenerly had nothing to report.

Business, Commerce, and Economic Development

Councilman Schulte is absent.

ADMINISTRATIVE ACTIVITY REPORT

Mayor Copenhaver presented the July 2009 Report which is incorporated herein and made a part of the official Regular Meeting Minutes.

UNFINISHED OR TABLED BUSINESS

None

NEW BUSINESS

Peckers Restaurant Alcohol License Application

COUNCIL MEMBER JESTER MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO APPROVE PECKERS RESTAURANTS ALCOHOL LICENSE APPLICATION WITH THE PROVISION OF WAIVING FINGERPRINT REQUIREMENT.

The motion carried by a 5 – 0 vote with all members present in favor.

City Planner Wistar Harmon reported all conditions for approval of the alcohol license, with exception of the fingerprint card, have been met.

City Attorney Thomas Mitchell reported that although it is a state requirement the city faces no consequences in waiving the fingerprint card requirement.

Proposed Fiscal Year 2010 Budget

Councilman Walden reported the revenues and expenses for all proposed 2010 Budgets balance which will be submitted for approval during the September Council Meeting. Walden will hold a budget hearing at least one week prior to the September Regular Council Meeting with the date and time to be announced.

Councilman Walden submitted a copy of the General Fund, Water/Sewer Revenue Fund, and SPLOST Funds Budgets during the Thursday Work Session which are incorporated herein and made a part of the official 7/30/2009 Work Session Meeting Minutes.

Addition of Technology Surcharge to all offenses, with certain exceptions

COUNCIL MEMBER SHEPHERD MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO WAIVE FIRST READ TO APPROVE IMPOSING A \$20 TECHNOLOGY SURCHARGE.

The motion carried by a 5 – 0 vote with all members present in favor.

City Attorney Thomas Mitchell reported the exceptions as being seat belt violations and statutory exceptions.

Councilman Shepherd reported a technology surcharge allows for potentially \$12,240 in annual additional revenue for Public Safety technology expenses. Shepherd explained the surcharge is a \$20 fee to be added per offense, with exception of seat belt violations and statutory exceptions, in addition to any other fees or fines of the Hoschton Municipal Court. Surrounding police departments have implemented this surcharge.

Chief Howell confirmed the technology surcharge money would be maintained in a separate account and that neither the State of Georgia nor Georgia Probation would receive any portion of this revenue. Chief stated the Hoschton Court Clerk would collect the \$20 technology fee.

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Interim Report on the Special Committee for Charter Revision

Councilman Jester reported the Special Committee for Charter Revision had met on July 20th at 7PM for 2.5 hours. Jester reported this first special committee meeting focused on organizing materials and documentation as well as reviewing the background of Municipal Charters of Georgia. Jester thanked city attorney Thomas Mitchell for having already taken the existing Hoschton Charter language and married it with the new GMA Charter format without making changes which was reviewed along with cross-references of new and old language. Jester announced all materials utilized during the meeting are posted and available on the city website. Jester stated the second meeting will be held Monday, August 10th at 7:00 p.m. in City Hall to review the revised Charter and identify problem areas with the city attorney present to provide immediate feedback to questions. Some issues identified during the first meeting includes Mayor and Council residency requirements for qualifying, Mayor and Council terms regarding two years versus four years, ad valorem tax relating to no cap and establishing a maximum, possible reduction from six to four Council members, Mayor voting, and Mayor Pro Tem term. Jester encouraged participation at the next special committee meeting. Jester intends to present final proposed revised Charter to Mayor and Council during the September 14th Regular Council Meeting.

Kelly Gary, 22 Hickory Walk, raised a couple questions to Councilman Jester including concerned that interested parties qualifying will be qualifying under different powers than current Charter authorizes thereby causing confusion. City Attorney Thomas Mitchell explained the changes will not affect Mayor and Council this year because the new Charter will have to be phased in without any changes to powers until at least the next election. Gary stated his concern of the language regarding the Johns Creek Charter with relation to the petition he circulated and his intention to request the General Assembly to insert the language from the petition into the Hoschton Charter.

Proposed Changes to Alcohol Ordinance

COUNCIL MEMBER JESTER MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO WAIVE FIRST READ ON PROPOSED CHANGES TO THE ALCOHOL ORDINANCE.

The motion carried by a 5 – 0 vote with all members present in favor.

Councilman Jester discussed the need to change the alcohol Ordinance to make the Ordinance more clear, address confusion within the Ordinance and set the stage for next month. Jester referenced Section 32-201 titled Malt, Vinous and Other Alcoholic Beverages as needing to be repealed after adoption of new Chapter 40. City Attorney Mitchell explained Section 32-201 was repealed, when the Hoschton Code of Ordinances was re-adopted this Section 32-201 was included, but if there are ever any disputes or issues Chapter 40 does control. Mitchell stated deleting Section 32-201 would clear that confusion. Jester proposed changing Chapter 40, Section 40-104 titled Licenses Generally to include the new due dates for business license renewals. Mitchell explained the Ordinance should only reference Resolutions or Fee Schedules as adopted by Mayor and Council. The language including dates should be removed. Jester referenced Section 40-108, 1-6, titled Location of Licensed Operation: Distance Requirements from Schools and Church Buildings as needing amending for clarity regarding the manner and direction of measuring distance. Jester proposed considering the opportunity to bring this service in-house for which the city would receive a fee for providing. Mitchell said the State does not provide guidelines with regard to Section 40-108. Mitchell advised Council to revise the Ordinance with language that allows the applicant to choose who they want to engage for measuring and if the city is requested to provide this service then a waiver be signed by applicant. Jester reported a suggestion by City Planner Harmon to clean-up the language regarding C1 and C2 versus commercial and industrial uses. Jester deferred to Mitchell for a brief explanation of including within Section 40-108 a number 7 to grandfather in the City Square Property. Mitchell stated number 7 provide for a general grandfather clause and number 8 would grandfather in City Square. Jester recommended including Towne Center Parkway with regard to the grandfather provision. Jester recommended amending Section 40-111 Application Forms with regard to inclusion or exclusion of fingerprint requirements.

Councilman Jester provided an outline to Mayor and Council titled Recommended Changes to the Alcohol Ordinance which is incorporated herein and made a part of the official Regular Meeting Minutes.

Status Report regarding four issues regarding drainage and rights-of-way

Councilman Jester explained this discussion is based on issues presented to Council by Doug Easter which he asked City Planner Wistar Harmon to address with updates. Harmon reported Mr. Easter having raised four issues for consideration. First being the city to require a performance bond when issuing a land disturbance permit, which the city had been investigating. Harmon referenced the Creekside Development as a project that ran out of funding. Harmon reported the cost to stabilize the Creekside site would be \$60,000

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and although a lien may be placed on the property it has been declared a viable project by FDIC and therefore not going into foreclosure so thereby reverting back to the two developers. The two developers are now broke and selling their assets to pay off bills and therefore have no assets to pursue. If Hoschton pays \$60,000 to stabilize the site it will force the two owners into bankruptcy and the city will be out \$60,000. Harmon has requested from Athens-Clarke County and Jackson County the forms they have for requiring performance bonds and will work with city attorney Mitchell to have legal forms for Hoschton. Harmon stated the second issue raised was fine folks that leave a worksite and track mud down the street. Harmon reported municipalities do have the right to impose this fine, that the amount needs to be established and issuance of citations would be handled by the Hoschton Police Department. Mr. Easter's third issue was for the city to remove tall grass and weeds from properties. Harmon has since mailed a letter to the property owner at Hall and Broad Street with notification that this maintenance needs to be done and if it is not done the city will perform the service and file a lien against the property. Harmon reported the fourth issue being the need to close off access to these sites which is part of what Harmon and Nick Hobbs are dealing with through the process of performance bond issue for land disturbance permits which will require the ability for the city to close off sites when construction is not underway at the site.

Easement proposal to grant an exception and permit Michael Holly to build fence next to drainage easement

COUNCIL MEMBER JESTER MADE A MOTION, SECONDED BY COUNCIL MEMBER WALDEN, TO GRANT A WAIVER TO ALLOW MR. MICHAEL HOLLY TO BUILD FENCE UNDER THE CONDITIONS STIPULATED BY THE CITY ATTORNEY.

The motion carried by a 5 – 0 vote with all members present in favor.

Councilman Jester reported Mr. Holly having met with the committee during its meeting although resolution of the issue was not reached. Jester explained Mr. Holly has a small easement that runs between his property and the adjoining property which runs back to a creek. The portion that runs from the street to the header is underground and then is exposed and runs surface water approximately 175 feet to a small creek at the back of the property. Mr. Holly initially requested permission to build a fence then asked the city to share the expense of improving the easement. Jester explained the city doesn't have funds for easement improvements and that Mr. Holly no longer takes care of the easement which has compounded the problem. Jester recommended granting Mr. Holly permission to build a fence from the header to the back of his property so long as he keeps the easement cleaned out.

Councilman Walden spoke with Mr. Holly and is concerned that this recommendation will not solve the problem due to the adjoining neighbors existing fence. Walden explained that if Mr. Holly builds a fence it will only provide for about a 28 inch opening between the two fences and then each homeowner is only legally responsible for maintaining half of the 28 inch space. Walden agreed the city does not have the funds for easement improvements and that he has no problem giving Mr. Holly permission to build a fence as the neighbor did.

City Attorney Mitchell reported that based on the existing fence sitting in the easement, his recommendation would be to force the neighbor to move the fence so that the city can maintain the drainage easement. Absent that Mitchell recommends having the neighbor sign a waiver, a covenant and an indemnification, if he is allowed to keep his fence. Mitchell further stated that he would then recommend Mr. Holly also be required to sign a waiver, a covenant and an indemnification if he decides to build a fence whether the fence sits in the easement or not. Jester requested Mitchell create a letter describing each option for both property owners.

Recommendation regarding property adjoining Mr. Horace Johnson

Councilman Jester reported this issue has come up during committee meetings. Jester mentioned completion of a survey one to two years ago which was in anticipation of paving and improving the Depot parking area. At that time the city believed its ownership of property was sufficient to complete the paving and improvements as done. Jester discussed the area dedicated and now referred to as Hoschton Commons which was designated as the site for moving then restoring the historic mercantile building then the dispute of property line ownership came up. Upon review of ownership title the city determined it didn't have ownership of the right-of-way and in order to claim ownership would have to receive Quit Claims from two additional Jackson family descendants. Jester recommended rethinking the location of the building due to Mr. Horace Johnson having cared for the property as his own since living there and having rights notwithstanding the Quit Claim Deeds as well as feeling as if the act is taking something away from Mr. Johnson. Councilman Jester recommends city attorney Mitchell work with Mr. Johnson's attorney to come to a compromise and defer to Mr. Johnson's best interest.

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Councilwoman Kenerly agreed the attorneys should work to reach a compromise and the city should not take his front yard. Kenerly said it would require a couple thousand dollars to move the building far and the Historical Commission doesn't have the funds for this additional expense.

Fall Festival Concert beer and wine sales

COUNCIL MEMBER SHEPHERD MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO APPROVE THE CONSUMPTION OF ALCOHOLIC BEVERAGES IN PUBLIC FROM OPEN CONTAINERS DURING THE 2009 HOSCHTON FALL FESTIVAL WITH THE SCOPE OF THIS RESOLUTION AS FOLLOWS: a. This resolution shall apply on September 25 and 26, 2009 between the hours of 6:00 p.m. and 10:00 p.m. b. This resolution shall apply to the geographic area described as follows: The Towne Center Shopping Center located on Towne Center Parkway. c. This resolution shall apply only to those licensees whose premises are currently licensed by the City of Hoschton. d. The locations of the kiosks for dispensing beer and wine shall be as shown on the sketch attached hereto as Attachment A. e. Employees of licensees may serve persons seated in the tables in front of the stage as shown on Attachment A from 6:00 p.m. to 9:30 p.m. This area shall be roped off and access shall be restricted to those holding tickets for those tables, employees of licensees, and city employees or officials. f. The Owner of Towne Center Shopping Center shall approve the locations shown in Attachment A or provide an alternative sketch on or before September 1, 2009.

The motion carried by a 5 – 0 vote with all members present in favor.

Councilman Shepherd introduced a Resolution approving the consumption of alcoholic beverages in public and from open containers during the 2009 Hoschton Fall Festival.

City Attorney Mitchell pointed out that item "c." had been broadened from last year to include licensees whose premises are currently licensed by the City of Hoschton rather than only those licensed whose premises was Towne Center Parkway.

Councilman Shepherd noted that last year Chuck Cope, Anthony's Restaurant, approached the owners of Poppi's Pub asking if they had an interest in setting up a kiosk at Towne Center to serve alcohol and they declined.

Councilman Green pointed out Hoschton's Police force last year was slightly larger and asked Chief Howell his feelings of maintaining order. Chief Howell stated last year experienced minimal problems and the police department has worked to grow the reserve officer force that will be on duty and therefore not have a smaller force than last year.

Walden confirmed with Chief Howell and Councilwoman Kenerly that the police force would be paid by the Hoschton Business Alliance and not city funds.

ITEMS FOR MAYOR, CITY COUNCIL AND CITY STAFF CONSIDERATION

None

EXECUTIVE SESSION

Council Member Green makes the following motion:

- (1) That the Mayor and Council now enter into closed session as allowed by O.C.G.A. § 50-14-4 and pursuant to advice by the City Attorney, for the purpose of discussing the following:
Pending Litigation and Personnel Matters
- (2) That this body, in open session, adopt a Resolution authorizing and directing the Mayor or presiding officer to execute an Affidavit in compliance with O.C.G.A. § 50-14-4, and that this body ratify the actions of the council taken in closed session and confirm that the subject matters of the closed session were within exceptions permitted by the open meetings law, said Resolution to be in the form as attached hereto.

COUNCIL MEMBER GREEN MADE A MOTION, SECONDED BY COUNCIL MEMBER WALDEN, TO ENTER INTO EXECUTIVE SESSION.

The motion carried by a 5 – 0 vote with all members present in favor.

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COUNCIL MEMBER WALDEN MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO LEAVE EXECUTIVE SESSION.

The motion carried by a 5 – 0 vote with all members present in favor.

Mayor Copenhaver reported no action items from Executive Session.

ADJOURNMENT: Meeting adjourned at 8:45 p.m.

BEING NO FURTHER BUSINESS, COUNCIL MEMBER GREEN MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO ADJOURN.

Motion carried by a 5 – 0 vote with all members present in favor.

Respectfully submitted,

Kristen Mahan, City Clerk

Attachments in Minute Book

APPROVED:

William Copenhaver, Mayor

Kristen Mahan, City Clerk
